R. S. OGLESBY CO., INC., *v.* LINDSEY *et al.*

Nov. 16, 1911.

[72 S. E. 672.]

1. Partnership (§ 371*)—Special Partners—Liability for Debts—Evidence—Admissibility.—In a suit on a partnership debt, a defendant claiming to be a special partner was not entitled to show that he had lost the money put into the concern, and had received no dividends; the only issue being whether he had so complied with the statute as to avoid liability.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 848; Dec. Dig. § 371.*]

2. Partnership (§ 362*)—Special Partners—Liability—Burden of Proof.—In a suit on a partnership debt, a defendant who claims limited liability as a special partner must show compliance with Code 1904, §§ 2863-2886, regulating limited partnerships.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 842; Dec. Dig. § 362.*]

3. Partnership (§ 357*)—Limited Partnership—Compliance with Statute.—In a suit on a partnership debt, a defendant cannot avoid liability on the theory that a limited partnership existed without showing that the articles were recorded in the county clerk's office in a separate book kept for that purpose, and indexed in the name of the concern as required by Code 1904, § 2866.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 835; Dec. Dig. § 357.*]

4. Partnership (§ 357*)—Limited Partnership Organization—Record of Statement—Sufficiency.—The requirement by Code 1904, § 2866, that limited partnership articles be recorded in a separate book kept for that purpose, is sufficiently met by the county clerk recording articles in a book labeled "Roads and Limited Partnerships," if a custom of keeping road records in the book has been discontinued.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 835; Dec. Dig. § 357.*]

5. Partnership (§ 357*)—Limited Partners—Formation—Indexing Articles—Sufficiency.—The requirement of Code 1904, § 2866, that limited partnership articles be indexed in the name of such partnership in recording the same, is not met by indexing as "Limited Partnership," though there is but one limited partnership of record.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 835; Dec. Dig. § 357.*]

6. Appeal and Error (§ 877*)—Right to Complain.—Plaintiff in

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

error cannot complain of an instruction refused to defendant in error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3560-3572; Dec. Dig. § 877.*]

7. Partnership (§ 365*)—Special Partners—Liability—Knowledge of Relation by Creditors.—That a creditor of a corporation knew who purported to be the general and the special partners of a firm does not prevent him from relying upon the invalidity of the formation of the partnership to defeat a defense that part of the defendants were special partners only.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 845; Dec. Dig. § 35.*]

8. Partnership (§ 362*)—Special Partners—Liability.—Good faith and honest intention to comply with Code 1904, §§ 2863-2886, regulating the formation of limited partnerships, will not protect one as a special partner if there has not been substantial compliance.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 842; Dec. Dig. § 362.*]

9. Partnership (§ 362*)—Limited Partnership—Compliance with Statute.—In a suit on a partnership debt to avoid a defense that certain defendants are special partners, plaintiff ned not show that he has been injured by defendants' noncompliance with Code 1904. §§ 2863-2886, regulating the formation of limited partnerships.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 842; Dec. Dig. § 362.*]

10. Partnership (§ 358*)—Limited Partnership—Formation—Requisites.—Under Code 1904, § 2871, requiring the names of the members of a limited membership to appear conspicuously on the front of the place of business, there must be some sign or writing conveying such information; and the sign or writing must be in a conspicuous place, and must be easily read.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 836; Dec. Dig. § 358.*]

11. Partnership (§ 358*)—Limited Partnerships—"Appear."—"Appear," as used in Code 1904, § 2871, requiring the names of the members of a limited partnership to appear conspicuously upon the front of the place of business, means to be obvious and manifest.

[Ed. Note.—For other cases, see Partnership, Dec. Dig. § 358.* For other definitions, see Words and Phrases, vol. 1, pp. 448-451.]

12. Partnership (§ 358*)—Limited Partnerships—"Conspicuously."—"Conspicuously," within Code 1904, § 2871, requiring that the names of the members of a limited partnership appear conspic-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

uously upon the front of the place of business, means plain to the eye, and easily seen.

[Ed. Note.—For other cases, see Partnership, Dec. Dig. § 358.*

For other definitions, see Words and Phrases, vol. 2, p. 1454; vol. 8, p. 7613.]

13. Partnership (§ 358*)—Limited Partnerships—Statutory Requirements.—The requirement of Code 1904, § 2871, that the names of the members of a limited partnership appear conspicuously upon the front of the place of business, is not met by placing typewritten papers 8¼ feet from the floor, and illegible to one standing on the floor at the entrance of the doors of the place of business, or on the sidewalk adjacent thereto.

[Ed. Note.—For other cases, see Partnership, Dec. Dig. § 358.*]

Error to Circuit Court, Grayson County.

Action by the R. S. Oglesby Company, Incorporated, against C. L. Lindsey and others. From the judgment, plaintiff brings error. Reversed.

H. C. Gilmer and *J. H. Rhudy,* for the plaintiff in error.

W. S. Poage, R. L. Kirby and *W. D. Tompkins,* for the defendants in error.

The following instructions requested by plaintiff were refused:

Instruction No. 1: "The court instructs the jury that if they believe from the evidence that the paper offered in proof in this case as the statement and affidavit under which the Lindsey Mercantile Company, Limited, was formed, has not been recorded in the clerk's office of Grayson county, Va., in a separate book kept for that purpose, or that the same has not been indexed in the name of the Lindsey Mercantile Company, Limited, then all the parties defendant are liable as general partners, and you shall find for the plaintiff."

Instruction No. 2: "The court instructs the jury that if they believe from the evidence that any material part of the capital contributed to this partnership by the special partners was, during the continuance of the partnership, withdrawn or diminished otherwise than by losses or in the ordinary course of business, then all the defendants in this case are liable as general partners, and you shall find for the plaintiff."

Instruction No. 3: "The court instructs the jury that, in order that the special partners in this case may be relieved of the ordinary liability of general partners, the names of the partners of the Lindsey Mercantile Company, Limited, with a designation of which were general and which were special partners,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

must have appeared conspicuously upon the front of the place of business of said partnership during the time while said partnership was in business; and, if you shall believe from the evidence that this requirement was not complied with, you shall find for the plaintiff against all the defendants."

The court instructed for plaintiff as follows:

"No. 1. The court instructs the jury that, in order that the special partners in this case may be relieved of the ordinary liability of general partners, the names of the partners of the Lindsey Mercantile Company, Limited, with a designation of which were general and which were special partners, must have appeared conspicuously on the front of the place of business of said partnership during the time while said partnership was in business; and, if you shall believe from the evidence that this requirement was not substantially complied with, you shall find for the plaintiffs against all the defendants.

"No. 2. The court instructs the jury that the word 'conspicuously' means plain to the eye, easily seen."

The following instructions requested by defendants were refused:

"No. 1. That if the jury shall believe from the evidence that at the time plaintiff sold the goods, wares, and merchandise shown by the account to have been bought, plaintiff or its officers and agents had knowledge as to who were the general and who were the special partners, and of the other facts connected with the formation of said firm, then they are estopped to deny such knowledge, and from insisting that defendants are liable to it, and the jury will find for the defendants.

"No. 2. That if the jury shall believe from the evidence that at the time the debt in the declaration mentioned was made and contracted the names of the partners, with a designation of which were general and which were special partners, appeared conspicuously upon the front of the place of business of the Lindsey Mercantile Company, Limited, then, with reference to the requirements of the statute, the court tells the jury defendants complied with the same, and if plaintiff relies on this failure of the defendants to comply with the statute for a recovery, and the jury shall believe defendants have complied therewith, they shall find for the defendants.

"No. 3. That if the jury shall believe from the evidence that the names of the partners, with a designation of which were special and which were general partners, appeared conspicuously upon the front of the place of business of the Lindsey Mercantile Company, Limited, then, with reference to this requirement of the statute, the court tells the jury that defendants complied with the same, and if plaintiff relies on this failure to comply with the statute for a recovery, and the jury shall believe de-

fendants have complied therewith, they will find for the defendants.

"No. 4. That if the jury shall believe from the evidence that defendants substantially complied with that requirement of section 2871 of the Code of 1904, with reference to having appeared conspicuously upon the front of the place of business of the Lindsey Mercantile Company, Limited, the names of the partners, with a designation of which were special and which were general partners, and the plaintiff relies upon their failure to do so for a recovery, then the court tells the jury plaintiff is not entitled to recover on this ground in this action, and the jury will find for the defendants.

"No. 5. That the burden of proof is upon the plaintiff to make out its case by a preponderance of the evidence, and to the satisfaction of the jury."

The court instructed for defendants as follows: "The jury are instructed that the evidence in this case shows that the special partners complied with the law in regard to recording and publishing the paper under which the defendant partnership was formed, as provided by statute, and the plaintiff cannot recover on this ground."

KEITH, P. The Oglesby Company, Incorporated, sued C. L. Lindsey and others in assumpsit, claiming the sum of $586.30 as due upon an account for goods sold and delivered. The defendants appeared, and pleaded that the cause of action mentioned in the declaration was contracted, if at all, by the Lindsey Mercantile Company, a limited partnership formed and doing business under the laws of the state of Virginia; that the defendants other than C. L. Lindsey were only special partners of the Lindsey Mercantile Company; that they were not interested or in any way connected with the Lindsey Mercantile Company except in their capacity as such special partners, and at a subsequent day the defendants appeared and filed a further plea, setting out in detail the fact that they were liable only as a limited partnership, and averring their compliance with the statute laws regulating the formation of such partnerships; that the plaintiff before the debt in the declaration mentioned was contracted had full knowledge of the organization of said limited partnership, who composed the same, how they were bound, the amount of capital put in by each of said partners, and who were the general and who the special partners, and to what extent each of the members of the firm were bound for the debts and obligations of the partnership, and had full and complete knowledge of every fact to enable them to know to whom they were and how they were extending credit; and that by reason of the premises the plaintiffs were estopped from

asserting the demand referred to in the declaration against them and upon which this action is founded.

Upon the trial the jury found a verdict against the general partner, C. L. Lindsey, and in favor of all of the other defendants, the special partners, referred to in the declaration, upon which judgment was entered, and to this judgment a writ of error was awarded.

"By the common law every member of an ordinary partnership is liable in solido for the debts and engagements of the firm. The law ignoring the firm as anything distinct from the persons composing it treats the debts and engagements of the firm as the debts and engagements of the partners, and holds each partner liable for them accordingly." George on Partnership, § 109.

"A limited partnership is one in which the liability of one or more, but not all, of the partners, is limited to the amount contributed by him or them to the firm capital at the time of the formation of the partnership. They are created only by statute, and exist and are controlled entirely by legislative enactments." Gilmore on Partnership, § 204.

The statutes regulating the formation of limited partnerships in this state are found in chapter 135, Code 1904.

Section 2865 provides that the persons forming a limited partnership "shall make and severally sign a paper, which shall state the name and place of residence of each partner, the name or firm name under which the partnership is to be conducted, who are general and who are special partners, the sum which each special partner contributes, and whether such contribution is made in cash or in other property at cash value, or to what extent in each, the general nature of the business to be transacted, the place or places of said business, the duration of the partnership. * * * One or more of the general partners shall also make oath that each sum so stated to be contributed has been actually contributed in the form set forth in said paper."

By section 2866 it is provided that "no such partnership shall be deemed to be formed until such paper and a certificate of such oath, or a certified copy thereof, shall be admitted to record as to each person singing the same in each county and corporation in which the place or places of the said business may be. The said paper and certificate shall be recorded in a separate book to be kept for the purpose, and be indexed in the name of such partnership."

By section 2867 it is provided that "the parties shall publish a copy of the said paper and certificate immediately after they are admitted to record once a week for four successive weeks in a newspaper (if such there be) published in every such county or corporation; and, if no newspaper be published in

any such county or corporation, they shall post a copy of such paper and certificate for four successive weeks at the front door of the courthouse of such county or corporation. If such publication or posting be not made, the partnership shall be deemed general."

By section 2871 it is declared that "the names of the partners, with a designation of which are general and which are special partners, shall appear conspicuously upon the front of the place or places of business of the partnership. * * *"

[1] The first assignment of error is to the ruling of the court as set out in plaintiff's bill of exceptions No. 1, from which it appears that T. L. Felts, one of the defendants, while testifying as a witness, was asked by his attorney whether or not he had made any money or received any dividends out of the business of the Lindsey Mercantile Company, to which plaintiff by counsel objected, but the court overruled the objection, and permitted the witness to answer the question. The witness in answering said question said that he had lost all the money he had put into the business of the Lindsey Mercantile Company, Limited, and had never received any dividends from said business. The plaintiff asked the court to strike out the answer, but the court refused to do so.

We think this ruling of the court erroneous. It was wholly immaterial to the issue whether T. L. Felts had or had not lost the money he had put into this company, or whether he had or had not received any dividends from the business. That the debt was due is shown by the verdict of the jury, which finds for the sum demanded against the general partner, and the sole question is whether there has been a compliance with the statute which exonerates the other defendants, among them T. L. Felts, from liability for this debt.

[2, 3] The plaintiff in error by proper bills of exceptions calls in question the propriety of the judgment of the circuit court in refusing certain instructions asked for by the plaintiff in error, and in giving certain other instructions at the instance of the defendants in error.

Instruction No. 1, asked for by the plaintiff and refused by the court, tells the jury that they must find for the plaintiff, unless the paper offered in proof as the statement and affidavit under which the Lindsey Mercantile Company was formed had been recorded in the clerk's office of Grayson county in a separate book kept for that purpose, and been indexed in the name of the Lindsey Mercantile Company, Limited.

It appears from the evidence that there was a book in the clerk's office labeled "Roads" and "Limited Partnerships;" that the custom of keeping road records in this book was discontinued before the said articles were recorded, and it has never

been used since for road purposes; that the articles are not indexed in the book in the name of the Lindsey Mercantile Company, Limited, but that the index shows "Limited Partnership;" and that this partnership is the only limited partnership which appears of record in Grayson county, Va.

It is a matter of contention between the parties whether or not the court should construe the statutes with respect to limited partnerships strickly or liberally, and upon this subject the courts seem somewhat at variance. On the one side it is contended that those who claim under a statute which derogates from the common law must show strict compliance with its terms; on the other hand, that the statutes are remedial in their nature and entitled to a liberal construction.

Perhaps the suggestion in Bates on Limited Partnerships, § 13, that "provisions for the protection of third persons are to be liberally construed in favor of such persons, which means strictly against the special partner; and provisions which cannot affect the rights of third persons will be liberally construed, so as not to forfeit the protection of the statute without reason," offers a satisfactory solution of the difficulty. It seems to us clear that as the liability of a general partner is in solido for all the debts of the firm, and that the statute law, by virtue of which alone a limited partnership exists, has provided that upon a compliance with its terms special partners shall come under a limited liability, there is no hardship in requiring a person seeking such limitation upon his liability to show a compliance upon his part with the terms of the statute upon which he relies—that the courts should adopt and enforce a reasonable construction of the statute which, on the one hand, will not defeat one of the objects of the law, which is to induce the investment of capital in business, and upon the other hand will not under cover of a substantial compliance with the requirements of the statute fritter away the protection which the law has thrown around those who deal with the firm.

To this effect is section 205 of Gilmore on Partnership, where it is said: "The better view, and the one toward which the courts are now tending, would seem to be that those provisions of the statute which are clearly for the protection of creditors should be strictly complied with, but that a mere formal defect or technical violation of the statute should not make the special partner liable as a general partner, unless it can be shown that creditors have been misled."

[4, 5] Plaintiff's instruction No. 1 we think very well illustrates what we conceive to be a just and reasonable construction of the law. We think that the requirement that the paper offered in evidence as the statement and affidavit under which the Lindsey Mercantile Company, Limited, was formed, should

be recorded in a separate book kept for that purpose, was sufficiently complied with in this case, as shown by the facts to which we have alluded; but, on the other hand, the requirement of law that the statement be indexed in the name of the Lindsey Mercantile Company, Limited, is not answered by the proof that the index shows "Limited Partnership," and that this partnership is the only limited partnership which appears of record in Grayson county.

[6, 7] Instruction No. 1, asked for by the defendants in error, having been refused by the court, is not the subject of exception by the plaintiff in error, but the principle which it embodies is one of importance, and it will not be improper to discuss it. It proceeds upon the idea that knowledge upon the part of the plaintiff as to who were the general and who were the special partners, and of other facts connected with the firm, was sufficient to bring the defendants within the protection of the law as to special partners. We do not think that knowledge has anything to do with the question.

It was said by this court in Hoge *v.* Turner, 96 Va. 624, 32 S. E. 291, in speaking of section 2877 of the Code, which relates to doing business as a trader with the addition of the words, "factor," "agent," etc., that its provisions apply without regard to knowledge by the creditor of the principal, if principal there be, for "knowledge or want of knowledge does not affect the application of the statute. It is an immaterial matter."

In 19 Am. & Eng. Ency. L. (2d Ed.) p. 340, it is said: "The question is not one of good faith on the part of the members, nor of notice to creditors, nor whether the creditors had actual knowledge of the facts required to be set out in the recorded statement, but whether the members conformed to the law in their attempt to form a limited partnership."

In 30 Cyc., at page 762, it is said that "there is authority for the view that persons who deal with a firm as a limited partnership are estopped from denying the validity of its organization, but the better doctrine is that creditors are not thus estopped, unless they have advised the partners to carry on their business in this irregular manner or have expressly assented to the limited liability of the special partner."

[8, 9] Nor will good faith and an honest intention to comply with the statute protect the special partner; nor need a creditor prove that he has been injured by a failure to comply with the statute. The statute must be actually complied with. George on Partnership, § 197.

[10] Instructions 3 and 4 deal with so much of section 2871 as provides that "the names of the partners, with a designation of which are general and which are special partners, shall ap-

pear conspicuously upon the front of the place or places of business of the partnership."

[11, 12] That we consider one of the most material provisions of the statute for the protection of creditors and means just what the language imports. It must "appear"—that is, be obvious and manifest—"conspicuously"; that is, plain to the eye, and easily seen. There must be some sign or writing conveying the information required by the statute appearing conspicuously upon the front of the place or places of business of the partnership. The place to which it is attached must be conspicuous, and it must also be conspicuous in the sense that it may be easily read.

[13] We do not think that the evidence in this case in these respects measures up to the requirements of the law. Two typewritten papers placed at a height of 8¼ feet from the floor, illegible to one standing on the floor at the entrance of the doors or on the sidewalk adjacent thereto, and almost illegible after being taken down from their position above the door, one of them written on a piece of paper 7¾ inches long and 2¾ inches wide, and the other 1 inch wide and about 4 inches long, upon which nothing was legible, exposed to the weather for months, are neither a literal nor a substantial compliance with the law upon that subject. It appears, indeed, that for a considerable period of time there were no notices such as the law required.

We are of opinion that the judgment should be reversed, and the case remanded for further proceedings to be had in accordance with this opinion.

Reversed.

Note.

This is an important decision passing upon many points arising in the construction of an important statute, that relating to limited partnerships. The court holds that a person seeking the benefit of this statute must show a compliance with its provisions, and that provisions for the protection of third persons are to be construed strictly against the special partner and in favor of such persons, and that provisions which can not affect the rights of third persons will be liberally construed. The illustration given by the court of the distinction between such provisions is a particularly happy one on general principles. The recording of the partnership articles in a book labeled "Roads and Limited Partnerships," was a sufficient compliance with the requirement that such record be in a separate book kept for that purpose, because a creditor could hardly be deceived thereby, while the failure to place the name of the partnership in the index to such book, although it was the only limited partnership recorded therein, might well deceive a person searching the records for such a limited partnership, as he might naturally infer, upon not seeing the name in the index, that it was not in the book, and so not look any further. He would have a right to rely upon the statute being complied with in that particular.

It would seem to the writer, however, on more careful consider-

ation, although the point is not raised apparently here, that it might well be questioned whether the cases which hold that "admission to record" (which is what § 2866 requires before such partnership shall be deemed to be formed) is not the clerical act of spreading the instrument on the record book, but is complete where the clerk accepts the instrument for recordation, although it may never be put upon the record book at all, are not applicable here. See Beverley *v.* Ellis, 22 Va. (1 Rand.) 102; Virginia Building, etc., Co. *v.* Glenn, 99 Va. 460, 39 S. E. 136, and other cases cited at p. 689 of 11 Va.-W. Va. Enc. Dig. As to deeds it is held that they need not be indexed in order to be validly recorded (see Virginia Building, etc., Co. *v.* Glenn, 99 Va. 460, 39 S. E. 136), and although the statute (§ 2866) concludes by saying that the said paper and certificate shall be recorded in a separate book, etc., and be indexed, etc., it might well be contended that the admission for record is complete, although these directory provisions to the clerk are not complied with, and that parties are not required to see to it that the clerk afterwards performs his duty of actually transcribing and indexing the instrument. In order to do this they would have to remain in the office until the clerk transcribes it in the proper book and indexes it before their eyes, or would have to return afterwards and see that he had done so. It does seem that this would be to require too much of parties seeking to comply with these statutes, and not to give enough weight to the presumption that the sworn officer of the court will do his duty. The declaration of § 2866, that no such partnership shall be deemed to be formed until such paper, etc., "shall be admitted to record," etc., is in equivalent terms to § 2465, declaring a deed void as against creditors and purchasers until and except from the time it is *duly admitted to record*, and the requirement of § 2505, as to the duty of clerk as to recording writing and making indexes, seems to be no less imperative, or any more directory in character, than that at the conclusion of § 2866. There is authority also for this view of the effect of failure to record due to clerk or other public officer. See post, under citation of cases.

The opinion goes on to declare, although the point was not at issue, that knowledge on the part of third persons of the true state of affairs has nothing to do with the question, following the rule as to § 2877, Va. Code, 1904, on doing business as a trader with the addition of the words, "factor," "agent," etc. Nor will the creditor's good faith and intention to comply with the statute supply the place of any failure to comply therewith. The reason is that to allow the introduction of evidence of such conditions as a substitute for strict compliance with the very statute which alone gives any authority for the limitation of liability claimed, would introduce new issues and questions not intended by the statute to be raised.

As only text-writers and Encyclopedic articles are cited, and no cases on limited partnership, the only case cited at all being an analogous statute, it may not be amiss to give here a few such cases and their holdings.

Limited partnerships exist only under warrant of statute. Statutes authorizing limited partnerships must be strictly complied with. Conrow *v.* Gravenstine (Pa.), 2 Cent. Rep. 372. And in case they are not complied with, the fact that the parties acted in good faith is immaterial. Lineweaver *v.* Slagle, 2 Cent. Rep. 617. 64 Md. 465. Note to Jenning's Appeal, 2 L. R. A. 43. See, also, Davidson *v.* Frechette, Montreal Law Rep. 5 Supr. Ct. 282; Haddock *v.* Grinnell Mfg. Co., 1 Cent. Rep. 360, 109 Pa. 372.

The general doctrine established under the "limited partnership"

laws existing in many of the states (which allow an individual to contribute a specific sum to the capital of the firm, and to limit his liability for losses to that amount, by complying with certain requirements as to filing articles and certificate of payment, publishing notice, etc.) is that, unless the directions of the statute are completely obeyed, the special partnership authorized is not created, but the contracts of the firm bind the intending special partner as a general one. Bement *v.* Phila. Impact Brick Mach. Co., 12 Phila. 494; Re Merrill, 12 Blatchf. 221, 13 Nat. Bankr. Reg. 91; Re Terry, 5 Biss. 110; Pierce *v.* Bryant, 5 Allen 91; Argall *v.* Smith, 3 Denio 435; 6 Hill 479; Beers *v.* Reynolds, 11 N. Y. 97; Haviland *v.* Chace, 39 Barb. 283; Andrews *v.* Schott, 10 Pa. 47; Richardson *v.* Hogg, 38 Pa. 153; Van Riper *v.* Poppenhausen, 43 N. Y. 68; Vandike *v.* Rosskan, 67 Pa. 330; Levy *v.* Lock, 5 Daly, 46, 47 How. Pr. 394; Van Ingen *v.* Whitman, 62 N. Y. 513; Durant *v.* Abendroth, 9 Jones & S. 53, 69 N. Y. 148; Pfirmann *v.* Henkel, 1 Ill. App. 145. Note to Imperial Refining Co. *v.* Wyman, 3 L. R. A. 503. See also, Clement *v.* British America, etc., Co., 141 Mass. 298; Vanhorne *v.* Corcoran, 127 Pa. 255, 4 L. R. A. 386.

A certificate filed with intent to create a limited partnership, which states that the intended special partner has contributed a certain sum in cash and a certain value in goods, is insufficient, and the parties are liable as general partners. Re Merrill, 12 Blatchf. 221, 13 Nat. Bankr. Reg. 91. Note to Imperial Refining Co. *v.* Wyman, 3 L. R. A. 503.

The affidavit to accompany the certificate need not follow the exact words of the statute; if it avers the facts required by the law it is sufficient, and it may be explained by reference to the certificate. Johnson *v.* McDonald, 2 Abb. Pr. 290; Pears *v.* Barnes 13 Nat. Bankr. Reg. 91. Note to Imperial Refining Co. *v.* Wyman, 3 L. R. A. 503.

Effect of Clerk's Failure to Properly Record Instrument.—Although statutes creating limited corporations are to be strictly construed, yet it has been held that such acts are to receive a reasonable construction. So, where the county clerk fails to record the certificate of formation of a limited partnership when duly filed with him for record, this of itself will not render a special partner liable as a general partner. Manhattan Co. *v.* Laimbeer, 11 Cent. Rep. 329, 108 N. Y. 578. The liability under the statute, it seems, attaches for noncompliance only upon failure on the part of the members to do an act which they or some one of them is required to perform, and not upon failure of a public officer to do his duty in the premises. Id.; Frost *v.* Beckman, 1 Johns. Ch. 288; Henkel *v.* Heyman, 91 Ill. 96; Pfirmann *v.* Henkel, 1 Bradw. 145. Note to Jenning's Appeal, 2 L. R. A. 43. See also, notes to Va. B'ld'g, etc., Co. *v.* Glenn, in 7 Va. Law Reg. 314, 322, and also in id. 620.

J. F. M.